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EXAMINER				
OBIESAN, AUGUSTINE KUNLE				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/599,178

Applicant(s)

PALACIOS, ANGEL

Examiner

AUGUSTINE OBISESAN

Art Unit

2156

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 2, 4 - 7, 10 - 12, 16, 19 - 20, 22 - 24, 30, and 40 - 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 2, 4 - 7, 10 - 12, 16, 19 - 20, 22 - 24, 30, and 40 - 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is response to the amendment filed on 7/31/2009 in which claims 1 – 2, 4 – 7, 10 – 12, 16, 19 – 20, 22 – 24, 30, and 40 – 44 are presented for further examination.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/31/2009 has been entered.

Response to Arguments

3. Applicant's arguments with respect to claims 1 – 2, 4 – 7, 10 – 12, 16, 19 – 20, 22 – 24, 30, and 40 – 44 have been considered but are moot in view of the new ground(s) of rejection necessitated by the amendment.

Remarks

4. As per amended claim 1, applicant argues in substance in pages 13 – 17 that Li (US 5,911,138) is directed to a method for organizing different queries while the instant application is directed to method for creating the structure of a query.

In response to applicant's argument, Examiner respectfully directed applicant's to MPEP § 2131.05

"Arguments that the alleged anticipatory prior art is nonanalogous art' or teaches away from the invention' or is not recognized as solving the problem solved by the claimed invention, [are] not germane' to a rejection under section 102." *Twin Disc, Inc. v. United States*, 231 USPQ 417, 424 (Cl. Ct. 1986) (quoting *In re Self*, 671 F.2d 1344, 213 USPQ 1, 7 (CCPA 1982)). See also *State Contracting & Eng ' g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1068, 68 USPQ2d 1481, 1488 (Fed. Cir. 2003) (The question of whether a reference is analogous art is not relevant to whether that reference anticipates. A reference may be directed to an entirely different problem than the one addressed by the inventor, or may be from an entirely different field of endeavor than that of the claimed invention, yet the reference is still anticipatory if it explicitly or inherently discloses every limitation recited in the claims.).

A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. The question whether a reference "teaches away" from the invention is inapplicable to an anticipation analysis. *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998) (The prior art was held to anticipate the claims even though it taught away from the claimed invention. "The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed."). >See *Upsher-Smith Labs. v. Pamlab, LLC*, 412 F.3d 1319, 1323, 75 USPQ2d 1213, 1215 (Fed. Cir. 2005)(claimed composition that expressly excluded an ingredient held anticipated by

reference composition that optionally included that same ingredient);< see also *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999) (Claimed composition was anticipated by prior art reference that inherently met claim limitation of "sufficient aeration" even though reference taught away from air entrapment or purposeful aeration.).

Furthermore, Banning (US 5,471,613) is directed to system, program, and method of graphically representing SQL query statement as instant application. Thus, the combine teaching of Banning (US 5,471,613) and Li (US 5,911,138) fully disclose all the limitation as enumerated below.

5. Thus, Examiner maintains the rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 43 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 43 fails to fall within a statutory category of invention. Claim 43 is directed to the program itself, not a process occurring as a result of executing the program, a machine programmed to operate in accordance with the program nor a manufacture

structurally and functionally interconnected with the program in a manner which enables the program to act as a computer component and realize its functionality. Therefore, claim 43 is non-statutory under 35 USC 101.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 – 2, 4 – 7, 10 – 12, 16, 19 – 20, 22 – 24, 30, and 40 – 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Banning et al (US 5,471,613), or, in the alternative, under 35 U.S.C. 103(a) as obvious over Li et al (US 5,911,138).

As per claim 1, Banning et al discloses, (US 5,471,613)

A system for managing calculation expressions (abstract) where graphically representing a WHERE clause of an SQL query is “managing calculation expression” as claimed.

comprising (a) memory means, for storing information about said calculation expressions (fig.1 and col.2 lines 58 – 67) where workstation including memory is “memory means, for storing information about said calculation expressions” as claimed.

(b) processing means, for modifying the content or form of said calculation expressions (fig.1 and col.2 lines 58 – 67) where processor for executing query is “processing means, for modifying the content or form of said calculation expressions” as claimed.

(c) means for receiving external input (fig.1 and col.2 lines 58 – 67) where user interface for entering input is “means for receiving external input” as claimed.

and (d) means for showing one or more arboreal graphical representations (abstract and col.2 lines 13 – 67) where graphics interface for displaying graphical representations of Where clause in SQL query is “means for showing one or more arboreal graphical representations” as claimed.

wherein (a) an arboreal graphical representation is an entity that shows a calculation expression in the form of a tree (abstract and col.3 lines 37 - 49) where graphical representation of query in tree structure is “graphical representation is an entity that shows a calculation expression in the form of a tree” as claimed.

and (b) at least one fragment of said calculation expression is shown in two different nodes of said tree (col.3 lines 13 - 33) where representing AND node with two OR node is “at least one fragment of said calculation expression is shown in two different nodes of said tree” as claimed.

The Examiner believes Banning (US 5,471,613) fully anticipates each and every feature of claim 1. In the alternative, it would have been obvious to one of ordinary skill in the art at the time invention was made to incorporate Li (US 5,911,138) into Banning (US 5,471,613) to include processing means, for modifying the content or form of said calculation expressions (Li: abstract, col.2 lines 1 – 38, col.5 lines 7 - 38, and claim 13). The modification would be obvious because one of ordinary skill in the art would be motivated to provide an easy and efficient means of identifying cause of particular problem during query execution.

As per claim 2, the rejection of claim 1 is incorporated and further Banning et al discloses,

further comprising means for editing said one or more arboreal graphical representations (abstract and col.5 lines 27 -35) where modifying the tree structure is "editing arboreal graphical representation" as claimed.

wherein said editing comprises one or more of the following actions: (1) creating after blank situation, (2) modifying, (3) creating after blank situation and modifying (abstract and col.5 lines 27 -35).

As per claim 4, the rejection of claim 1 is incorporated and further Li et al discloses,

wherein one of said graphical representations is a TOWER STRUCTURE wherein said tower structure is characterized by the following: the nodes of the tree are

arranged in vertical fashion, some nodes being located over other nodes, and said system comprises means to indicate which nodes are the parent of which nodes (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65).

As per claim 5, the rejection of claim 1 is incorporated and further Li et al discloses,

wherein one of said graphical representations is a VERTICAL STRUCTURE, wherein said vertical structure is characterized by the following: the nodes of the tree expand in vertical fashion, so that if a node is at a given position, its child nodes are located at a lower position, and it comprises means for indicating which nodes are the parents of which nodes (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65).

As per claim 6, the rejection of claim 1 is incorporated and further Li et al discloses,

wherein one of said arboreal graphical representations is an ESCALATOR STRUCTURE, wherein said escalator structure is characterized by the following: the nodes of the tree are arranged in different levels of a table, and certain nodes are only visible in certain levels of the table, so that the expression is read by changing levels in the positions where the transitions between nodes take place, and there might exist a summary cell that contains the total expression (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65).

As per claim 7, the rejection of claim 1 is incorporated and further Li et al discloses, wherein one of said arboreal graphical representations is a **HORIZONTAL STRUCTURE**, wherein said horizontal structure is characterized by the following: the nodes of the tree expand in horizontal direction, so that a parent node has a different horizontal position than its child nodes, and said system comprises means for indicating which nodes are the parents of which nodes (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65).

As per claim 10, the rejection of claim 1 is incorporated and further Li et al discloses,
further comprising means for applying the feature of **GROUPING OF PEERS**, which is characterized because said system imposes the condition that the operators that link different sister nodes have the same type (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65).

As per claim 11, the rejection of claim 1 is incorporated and further Li et al discloses,
further comprising means for applying the feature of **SEQUENCIATION OF NON ASSOCIATIVE OPERATORS**, which is characterized by the fact that the system imposes the obligation that the operators that join sister nodes must satisfy the

associative property (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65)

As per claim 12, the rejection of claim 1 is incorporated and further Li et al discloses, further comprising means for applying the functionality of EXPLICATIVE TEXT, whereby a descriptive text is associated to one or more of the nodes of said graphical representations (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65).

As per claim 16, the rejection of claim 1 is incorporated and further Li et al discloses, further comprising means for expanding and collapsing nodes in said arboreal graphical structures (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65).

Claims 19 – 20, 22 – 24, and 30 are method claim corresponding to the system claims 1 - 2, 4 – 6, and 12 respectively, and rejected under the same reason in connection to the rejection of claims 1 - 2, 4 – 6, and 12 respectively above.

As per claim 40, the rejection of claim 1 is incorporated and further Li et al discloses, further comprising means for applying the functionality of PARTIAL RESULTS, where said functionality is characterized by the following: for one or more nodes,

it shows a value that is associated to said node or nodes, wherein said value depends on the evaluation of said expression for said node or nodes (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65)

As per claim 41, the rejection of claim 1 is incorporated and further Li et al discloses,

further comprising means for converting said calculation expression into other type of entities, such as for example formulae for environments such as spreadsheet applications, search strings for database applications or Internet search engines or other types of entities (col.4 lines 59 – 67, col.5 lines 1 – 67, and col.6 lines 1 - 65)

Claim 42 is a method claim corresponding to the system claim 40, and rejected under the same reason set forth in connection to the rejection of claim 40 above.

Claim 43 is a computer program claim corresponding to the method claim 19, and rejected under the same reason set forth in connection to the rejection of claim 19 above.

Claim 44 is a computer readable medium claim corresponding to the method claim 19, and rejected under the same reason set forth in connection to the rejection of claim 19 above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

TITLE: Data refinery: a direct manipulation user interface for data querying with integrated qualitative and quantitative graphical representations of query construction and query result presentation, US 6,208,985 author: Krehel.

TITLE: Classification of information sources using graph structures, US 6,598,043 author: Baclawski.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AUGUSTINE OBISESAN whose telephone number is (571)272-2020. The examiner can normally be reached on 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pierre Vital can be reached on 571-272-4215. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

11/4/2009
/Augustine Obisesan/
Examiner, Art Unit 2156

/Pierre M. Vital/
Supervisory Patent Examiner, Art Unit 2156